Remarks

The Applicant respectfully requests reconsideration of the present U.S. Patent application as amended herein. Claims 1, 3, 12, 23, and 26 have been amended. Claims 14 and 25 have been cancelled without prejudice. No claims have been added or withdrawn.

Claim Objections

The Office action states that claims 3-11, 14-22, 25, and 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 14 and 25 have been cancelled and, therefore, the objections to claims 14 and 25 are moot. Claims 3-11 depend from claim 1; claims 15-22 depend from claim 12; and claims 27-30 depend from claim 26. As shown below, the Applicant respectfully submits that claims 1, 12, and 26, as amended, are allowable. Thus, the Applicant respectfully requests that the objects to claims 3-11, 15-22, and 27-30 be withdrawn.

Claim Rejections § 102

Claims 1-2, 12-13, and 23-24 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,699,519 issued to Shiobara (*Shiobara*). For at least the reasons set forth below, the Applicant submits that claims 1-2, 12-13, and 23-24 are not rendered anticipated by *Shiobara*.

The Manual of Patent Examining Procedure ("MPEP"), in § 2131, states:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 869 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Thus, under 35 U.S.C. § 102, a claim is anticipated *only if* each and every element of the claim is found in the cited reference and the cited reference must show the invention in as complete detail as contained in the claim.

Amended claim 1, in part, recites:

> ...associating a priority level based on the property with the at least one packet;

> attaching a packet description for the priority level to the at least one packet;

(Emphasis added). Claim 12 is an apparatus claim that similarly recites, "a controller ... to attach a packet description for the priority level to the at least one packet."

Shiobara is directed to the problem of providing a data transmission method and apparatus capable of relaxing a traffic jam of data transmission in a network system. See, e.g., column 2, lines 62-64. *Shiobara* does not, however, disclose "attach[ing] a packet description for the priority level to the at least one packet," as recited in claims 1 and 12. For at least the reason that *Shiobara* does not disclose "attaching a packet description for the priority level to the at least one packet," the Applicant respectfully submits that *Shiobara* does not anticipate claims 1 and 12.

Amended claim 23, in part, recites:

> read a packet description for at least one packet received from a network and placed into a queue, the packet description being based on a

property identified for the at least one packet, wherein the property is an
acknowledgment packet

(Emphasis added).

The Applicant submits that *Shiobara* does not disclose "read[ing] a packet

description for at least one packet received from a network and placed into a queue, the

packet description being based on a property identified for the at least one packet,

wherein the property is an acknowledgment packet," as recited in claim 23. For at least

the above-stated reason the Applicant respectfully submits that *Shiobara* does not

anticipate claim 23.

Claim 2 depends from claim 1; claim 13 depends from claim 12; and claim 24

depends from claim 23. For at least the reason that dependent claims include the

limitations of the claims from which they depend, the Applicant submits that claims 2,

13, and 24 are not anticipated by *Shiobara*.

Claim 26 was rejected under 35 U.S.C. § 102(e) as being anticipated by U.S.

Patent No. 6,404,772 issued to Beach et al. (*Beach*). For at least the reasons set forth

below, the Applicant submits that claim 26 is not anticipated by *Beach*.

Amended claim 26, in part, recites:

> identifying an acknowledgment property packet, the
> acknowledgment packet having a pre-designated priority value;

> associating a high priority level to the acknowledgement packet,
> wherein associating the high priority level to the acknowledgement packet
> includes disregarding the pre-designated priority value;

(Emphasis added).

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                                                        Examiner Chang, Richard

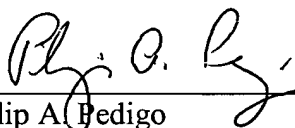Response to Office Action of December 15, 2004   TC/A.U. 2663

Beach is directed to a mixed traffic voice and data communications transmitter and network. See, e.g., column 2, lines 14-16. *Beach* does not, however, disclose "identifying an acknowledgment property packet, the acknowledgment packet having a pre-designated priority value [and] associating a high priority level to the acknowledgement packet, wherein associating the high priority level to the acknowledgement packet includes disregarding the pre-designated priority value," as recited in claim 26. For at least the above-stated reason the Applicant respectfully submits that *Beach* does not anticipate claim 26.

Conclusion

       The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

                                  Respectfully submitted,
                                  BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

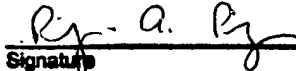Date: April 15, 2005
                                  Philip A. Pedigo
                                  Reg. No. 52,107

                                  12400 Wilshire Boulevard
                                  Seventh Floor
                                  Los Angeles, CA 90025-1026
                                  (323) 684-6200

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage addressed to Commissioner for Patents, P.O. ..., VA 22313 on:

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     Pedigo Philip A.

Person Mailing Correspondence

Signature   April 15, 2005   Date